

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JASON E. BENSON

v.

WILLIAM G. ELLIEN, ET AL

CIVIL ACTION

NO. 1:CV-00-1229

(JUDGE CALDWELL)

(MAGISTRATE JUDGE BLEWITT)

FILED
SCRANTON

JAN 2 2002

PER
DEPUTY CLERK

PLAINTIFFS REPLY TO DEFENDANT

ELLIENS RESPONSE TO PLAINTIFFS MOTION

TO COMPEL DISCOVERY, PRECLUDE EXPERT TESTIMONY

AND FOR SANCTIONS

IN DEFENDANT ELLIENS RESPONSE, HE AGAIN ASSERTS THAT "DR. ELLIEN IS NOT THE CUSTODIAN OF BENSON'S MEDICAL FILE, AND IS NOT LEGALLY ENTITLED TO PRODUCE COPIES OF INMATE MEDICAL RECORD FILES." (EMPHASIS ADDED.)

EVIDENTLY, COUNSEL FOR THE DEFENDANT IS NOT BOUND BY THE LEGALITIES OF WHICH THEY PLEDGE ALLEGIANCE, AS DEMONSTRATED BY THEIR BLATANT DISREGARD TO THEIR OWN AFOREMENTIONED ASSERTION, IN THAT THEY "SENT PLAINTIFFS' MEDICAL RECORDS TO AN INMATE IN S.C.L. SMITHFIELD!" SURBLY IF COUNSEL TRULY BELIEVED IN THEIR ASSERTION THAT THEY ARE NOT "LEGALLY ENTITLED TO PRODUCE COPIES OF INMATE MEDICAL FILES," PLAINTIFFS PSYCHIATRIC MEDICAL RECORDS WOULD NOT HAVE BEEN RELEASED TO A PERFECT STRANGER! THE PLAINTIFF ASKS THIS COURT TO REVIEW PLAINTIFF'S "MOTION FOR SANCTIONS FOR DISCOVERY ABUSE AND VIOLATIONS OF PROFESSIONAL CONDUCT" (DATED DECEMBER 4, 2001.) BEFORE RESPONDING TO DEFENDANT ELLIENS PREVARICATED RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION. THE DEFENDANTS STATEMENTS SPEAK VOLUMES IN THE CONTEXT OF WHAT THE PLAINTIFF IS PRESENTING ABOVE. FOR INSTANCE, "DR. ELLIEN IS NOT THE CUSTODIAN OF BENSON'S MEDICAL RECORDS FILE, [AND IS NOT LEGALLY ENTITLED TO PRODUCE COPIES] OF INMATE MEDICAL RECORDS FILES." SUBSTANTIALLY HERE THE DEFENDANTS CLEARLY ILLUSTRATES THAT HE HAS BROKEN THE LAW. THE ONLY THING LEFT FOR THE COURT TO DETERMINE IS A PROPER AND FAIR PUNISHMENT FOR THEIR ACTIONS.

IN REGARDS TO THE PLAINTIFF'S REQUESTS FOR SANCTIONS, THE COURT MUST CONSIDER THE PLAINTIFFS CURRENT OUTSTANDING COURT COSTS AND RESTITUTION, AS WELL AS THE REMAINING BALANCE OF PLAINTIFFS IN FORMA PAUPERIS STATUS.

CURRENTLY, PLAINTIFF OWES A TOTAL OF \$4445.41 TO ADAMS COUNTY UNDER CASE NUMBERS CC-510-98 AND CC-882-99 (SEE EXHIBIT "A")

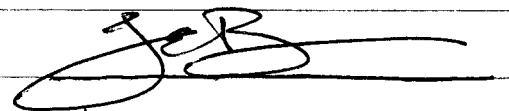
AS WELL, PLAINTIFF OWES THIS COURT THE REMAINING BALANCE OF HIS IN FORMA PAUPERIS FEES (\$59.69, SEE EXHIBIT "B")

BECAUSE THE PLRA PROVIDES THAT ANY COURT APPOINTED AWARD OR SANCTION MUST FIRST BE USED TO PAY PLAINTIFFS OUTSTANDING COURT COSTS AND RESTITUTION, IT IS NECESSARY FOR THIS COURT TO AWARD DAMAGES AND SANCTIONS THAT WILL FIRST COVER THE AFOREMENTIONED FINES, COSTS, AND RESTITUTION TOTALING \$4505.18, AND SECOND ENOUGH FOR PLAINTIFF TO CONTINUE TO PROVIDE LEGIBLE MOTIONS AND COPIES TO THIS COURT, AND THE DEFENDANTS IN THIS CASE.

IT MUST BE NOTED THAT TIME AND AGAIN, THE COURTS HAVE FOUND THAT A PETITIONER WHO CHALLENGES THE LICIT CONDUCT OF HIS ADVERSARIES IS ENTITLED TO A PROMPT DISPOSITION OF HIS COMPLAINT. TO ALLOW THIS SITUATION TO LANGUISH IN A PROCEDURAL MORASS OF THE DEFENDANT'S OWN CREATION MOCKS THE CONSTITUTIONAL GUARANTEE OF THE PLAINTIFFS CIVIL RIGHTS, AND THE INTENT OF CONGRESS TO PRESERVE THEIR AVAILABILITY.

THEREBY, THE PLAINTIFF RESPECTFULLY REQUESTS THIS COURT TO ~~GRANT~~ GRANT PLAINTIFF'S MOTION FOR SANCTIONS FOR DISCOVERY ABUSE AND VIOLATIONS OF PROFESSIONAL MISCONDUCT

December 25, 2001



Jason E. Benson, DS6483

S.C.I. Smithfield

P.O. Box 999, 1120 Pike St.

Huntingdon, PA 16652

CERTIFICATE OF SERVICE

THE PLAINTIFF JASON E. BENSON, HEREBY CERTIFIES THAT THE DATE INDICATED BELOW, THE ATTACHED MOTION WAS MAILED TO THE COURT BY FIRST CLASS MAIL.

DATE: DECEMBER 25, 2001

By 

Jason E. Benson, DS64283

S.C.I. Smithfield

P.O. Box 999, 1120 Pike St.

Huntingdon, PA 16652

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

January 2, 2002

Re: 1:00-cv-01229 Benson v. Duran

True and correct copies of the attached were mailed by the clerk
to the following:

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cc:

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|-------------------------|-----|---|
| Judge | () | () Pro Se Law Clerk |
| Magistrate Judge | () | () INS |
| U.S. Marshal | () | () Jury Clerk |
| Probation | () | |
| U.S. Attorney | () | |
| Atty. for Deft. | () | |
| Defendant | () | |
| Warden | () | |
| Bureau of Prisons | () | |
| Ct Reporter | () | |
| Ctroom Deputy | () | |
| Orig-Security | () | |
| Federal Public Defender | () | |
| Summons Issued | () | with N/C attached to complt. and served by: U.S. Marshal () Pltf's Attorney () |
| Standard Order 93-5 | () | |
| Order to Show Cause | () | with Petition attached & mailed certified mail to: US Atty Gen () PA Atty Gen () |

JB
1/2/02